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February 8, 2024

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VIA ECF

Honorable Ricardo S. Martinez
United States District Judge
U.S.D.C. - Western District of Washington
700 Stewart Street, Suite 13134
Seattle, WA 98101-9906

Re: *Utherverse Gaming, LLC v. Epic Games, Inc.*; Case No. 2:21-cv-00799-RSM-TLF

To the Honorable Ricardo S. Martinez:

I write on behalf of Defendant Epic Games, Inc. (“Epic”) regarding statements made by Plaintiff Utherverse Gaming, LLC (“Utherverse”) in its responses to Epic’s objections to the Report and Recommendation on the parties’ respective motions for summary judgment. *See* Dkt. 388, 389. Utherverse’s responses suggest that Epic’s objections were untimely filed by asserting that “the R&R directed the parties’ to submit written objections within fourteen days” of service and Epic “submitted its written objections seventeen days later—January 12, 2024.” Dkt. 388 at 1; Dkt. 389 at 1.

Epic’s objections were timely. Utherverse’s suggestion that Epic’s objections were untimely appears to be based on a failure to account for Federal Rule of Civil Procedure 6(d), which states that “[w]hen a party may or must act within a specified time after being served and service is made” by mail, “3 days are added after the period would otherwise expire.” Fed. R. Civ. P. 6(d); *see also Lerro v. Quaker Oats Co.*, 84 F.3d 239, 242 (7th Cir. 1996) (holding that the 3-extra-day rule for mail service under Rule 6(e) [now Rule 6(d)] applies to the deadline to objections to a magistrate judge’s report and recommendation); *Gonzalez v. Holbrook*, No. 1:14-CV-3108-SMJ, 2014 WL 6908740, at *6 (E.D. Wash. Dec. 8, 2014) (“Any party may object to the magistrate’s judge’s” report and recommendation “within fourteen days following service Attention is directed to Fed.R.Civ.P. 6(e) [now Rule 6(d)], which adds another three (3) days from the date of mailing if service is by mail.”). Because portions of the Magistrate Judge’s Reports and Recommendation were filed under seal, they were served by mail on December 26, 2023. *See* Ex. A. Epic’s deadline for filing objections was therefore January 12, 2024, and its objections were timely filed. *See* R&R (Dkt. 369) at 28 (“Accommodating the time limit imposed by Fed. R. Civ. 72(b), the

MORRISON FOERSTER

Honorable Ricardo S. Martinez
February 8, 2024
Page Two

Clerk is directed to set the matter for consideration on *January 12, 2024*" (emphasis added));
see also R&R (Dkt. 373) at 23.

Because the Federal Rules and Epic's deadline are clear, Epic did not articulate the proper calculation of the deadline in its objections. Utherverse's responses raise the issue for the first time. Epic's counsel reached out to counsel for Utherverse to ask it to correct its statements in its responses. Utherverse declined to do so. Thus, out of an abundance of caution and to avoid unnecessary future motion practice, Epic respectfully requests that the Court consider this letter and its authority so that the Court may be presented with Epic's position. We are happy to provide any further information that the Court requires.

Respectfully,

/s/ Timothy Chen Saulsbury

Timothy Chen Saulsbury

Attachment

cc: All Counsel of Record